

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE CHEROKEE BROWN,
Plaintiff,
v.
A. REILLY, et al.,
Defendants.

No. 2:20-cv-1709 WBS AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the court are plaintiff's motions for preliminary injunction (ECF Nos. 99, 103, 112, 113), motions to compel (ECF Nos. 102, 109, 110), motions for appointment of counsel (ECF Nos. 108, 114, 117), and motions for settlement (ECF Nos. 115, 116, 118).

I. Repetitive Filings

Plaintiff has been cautioned on multiple occasions that repetitive filings will be stricken from the record and that his persistence in filing repetitive motions would result in limitations on filing or sanctions. ECF Nos. 62 at 3-4; ECF No. 87 at 2; ECF No. 93 at 1. All repetitive motions will therefore be stricken from the record and plaintiff's filings shall be limited as set forth below.

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II. Motions for Preliminary Injunction

On January 11, 2023, the court received plaintiff's motion for preliminary injunction in which he alleged that he had been transferred back to California State Prison (CSP)-Sacramento, where defendants work, and that defendant Hood had threatened him on two occasions. ECF No. 99. He requested transfer to a different yard at CSP-Sacramento or to a different prison. Id. at 2-3, 5-6. Defendants were ordered to respond to the motion and plaintiff was advised that "he may not file any other motions for preliminary injunction on the same grounds or seeking the same relief" while that motion was pending. ECF No. 101 at 1. Plaintiff then proceeded to file a second motion for preliminary injunction in which he alleged that defendants Hood and Gonzales were threatening him and once again requested the court order him moved to a different yard at CSP-Sacramento or a different prison. ECF No. 103. After defendants filed their opposition to the motion (ECF No. 104), plaintiff filed a notice of change of address indicating that he had been transferred to California Health Care Facility (CHCF) (ECF No. 107), where it appears that he is still housed. Since his transfer to CHCF, plaintiff has filed two additional motions for preliminary injunction in which he alleges that two officers are refusing to release his legal property and requesting the court order the prison to provide him with his legal property. ECF Nos. 112, 113.

Because plaintiff has been transferred out of CSP-Sacramento, which was the relief he sought, and he has not demonstrated a reasonable expectation of being returned to that facility, his January 11, 2023 motion is moot and should be denied on that basis. Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001) ("[W]hen a prisoner is moved from a prison, his action [for injunctive relief] will usually become moot as to conditions at that particular facility" (citing Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995))); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam) (claims for injunctive relief related to conditions of confinement were moot where prisoner was transferred to another facility and "demonstrated no reasonable expectation of returning to [the original facility]." (citing Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986))). Plaintiff's subsequent motion seeking a transfer from CSP-Sacramento will be stricken from the record.

1 With respect to plaintiff's motion for preliminary injunction related to his legal property,
 2 the second filed motion will be stricken because it is duplicative. As to the first filed motion,

3 [a] plaintiff seeking a preliminary injunction must establish that he
 4 is [(1)] likely to succeed on the merits, [(2)] that he is likely to
 5 suffer irreparable harm in the absence of preliminary relief, [(3)]
 that the balance of equities tips in his favor, and [(4)] that an
 injunction is in the public interest.

6 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (citations omitted). Furthermore,
 7 a district court has no authority to grant relief in the form of a preliminary injunction where it has
 8 no jurisdiction over the parties. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999)
 9 (“Personal jurisdiction, too, is an essential element of the jurisdiction of a district . . . court,
 10 without which the court is powerless to proceed to an adjudication.” (alteration in original)
 11 (citation and internal quotation omitted)); Paccar Int’l, Inc. v. Com. Bank of Kuwait, S.A.K., 757
 12 F.2d 1058, 1061 (9th Cir. 1985) (vacating district court’s order granting preliminary injunction
 13 for lack of personal jurisdiction).

14 Plaintiff’s motion fails to demonstrate that he is likely to succeed on the merits in this
 15 case. ECF No. 112. Furthermore, though he attempts to allege irreparable harm in the form of an
 16 inability to pursue this lawsuit, plaintiff provides no evidence of his attempts to access his
 17 property or the alleged denials of access. He also has not demonstrated that extensions of time
 18 would not be sufficient to address the issue. Finally, plaintiff seeks relief against non-defendant
 19 prison officials rather than named defendants, and the court does not have jurisdiction over those
 20 individuals unless he provides facts showing that they are acting “in active concert or
 21 participation” with the defendants. Fed. R. Civ. P. 65(d)(2); Zenith Radio Corp. v. Hazeltine
 22 Rsch., Inc., 395 U.S. 100, 112 (1969) (“[A] nonparty with notice cannot be held in contempt until
 23 shown to be in concert or participation.”)). Plaintiff has failed to provide any such facts. Because
 24 the court lacks jurisdiction over the individuals against whom plaintiff seeks injunctive relief, the
 25 motion must be denied. See Zepeda v. I.N.S., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court
 26 may issue an injunction if it has personal jurisdiction over the parties and subject matter
 27 jurisdiction over the claim; it may not attempt to determine the rights of persons not before the
 28 court.”).

1 For these reasons, the motion for preliminary injunction related to plaintiff's legal
2 property should be denied.

3 III. Motions to Compel

4 On January 19, 2023, the court received plaintiff's motion to compel discovery from
5 defendants. ECF No. 100. The motion was denied because, while plaintiff identified the material
6 he was seeking to compel, he did not reproduce the requests at issue or defendants' responses and
7 failed to explain why the responses were deficient or the objections unjustified. ECF No. 101.

8 Plaintiff was advised that

9 [w]ithout the original requests, defendants' responses (including
10 any objections), and plaintiff's explanation as to why the responses
11 are deficient, the court is unable to determine whether production
12 should be compelled, and the motion will therefore be denied. If
13 plaintiff files another motion to compel, the motion must include a
copy of the requests as they were sent to defendants, defendants'
responses and objections, and an explanation as to why the
responses are deficient or the objections are not appropriate.

14 Id. at 2. Plaintiff then proceeded to file three additional motions to compel (ECF Nos. 102, 109,
15 110), which defendants oppose (ECF Nos. 106, 111).

16 All three motions to compel suffer from the same defects as the January 19, 2023 motion,
17 and the second and third motions were both filed approximately one month after discovery
18 closed¹ without any explanation for their untimeliness. The court further notes that defendants'
19 opposition to plaintiff's first motion includes evidence that the production requests at issue were
20 served two months after the deadline for serving discovery requests expired, and that defendants
21 nevertheless provided plaintiff with access to view the video he was requesting and various non-
22 confidential documents. ECF No. 106-1.

23 For these reasons, the motions to compel will be denied and any further motions to compel
24 will be stricken.

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26 ¹ Discovery closed on March 17, 2023 (ECF No. 98), and, affording plaintiff the benefit of the
27 prison mailbox rule, see Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing rule that a
28 prisoner's court document is deemed filed on the date the prisoner delivered the document to
prison officials for mailing), his motions were filed on April 13 and 24, 2023.

1 IV. Motions for Appointment of Counsel

2 Plaintiff has filed three substantively identical motions for appointment of counsel, the
3 first of which was filed on April 17, 2023. ECF Nos. 108, 114, 117. Furthermore, these motions
4 are no different in substance from the previous motions for counsel that plaintiff has filed, many
5 of which were stricken from the record due to their duplicative nature. ECF Nos. 51, 74, 76, 78-
6 82, 84, 89. The April 17, 2023 motion for counsel will therefore be denied on the same grounds
7 as plaintiff's previous motions for counsel, see ECF No. 62 at 2-3; ECF No. 75 at 3-4; ECF No.
8 87 at 2-3; and his two subsequent motions will be stricken from the record. Any further motion
9 for appointment of counsel should address the deficiencies identified in the court's previous
10 orders.

11 Plaintiff is reminded that in order to be considered, requests for the appointment of
12 counsel based upon claimed physical or mental impairments must be accompanied by medical
13 documentation supporting his claimed impairments, address the availability of accommodations
14 at the prison to assist him, and provide supporting documentation if he claims the requests for
15 accommodations are being denied. Requests based on an inability to access legal materials
16 should similarly be accompanied by documentation showing plaintiff's attempts to access such
17 materials and any denials he may have received. Plaintiff is further advised that in the event he
18 files another motion for appointment of counsel, he may not file any other motions for counsel
19 while that motion is pending or they will be stricken from the record.

20 V. Motions for Settlement

21 Plaintiff has filed three motions requesting early settlement in which he advises that he is
22 willing to make an offer to settle the case and requests defendants' counsel respond. ECF No.
23 115, 116, 118. His second motion also requests that the court schedule a settlement conference.
24 ECF No. 116. To the extent plaintiff seeks an order from the court directing defendants to accept
25 his settlement offers, he has been advised on multiple occasions that the court cannot compel
26 defendants to enter into a settlement agreement and this request will be denied. See ECF No. 25;
27 ECF No. 62 at 2; ECF No. 87 at 3. Plaintiff is advised that any further requests to order
28 defendants to settle the case will be stricken from the record without further warning.

1 With respect to plaintiff's second motion, which also requests that this case be referred for
2 a settlement conference, the request will be granted in part. The deadline for filing dispositive
3 motions has passed² and no party has filed a dispositive motion, meaning this case is otherwise
4 ready to proceed to trial. For this reason, plaintiff's motion for a settlement conference will be
5 granted to the extent defendants will be required to notify the court whether they believe a
6 settlement conference would be productive. If defendants agree that a settlement conference
7 would be productive, the court will set this case for a settlement conference prior to setting a
8 schedule for pretrial proceedings. If defendants do not believe a settlement conference would be
9 productive, they should provide the basis for this belief so that the court may assess whether a
10 settlement conference may still be appropriate. No reply to defendants' statement is necessary,
11 and plaintiff is informed that any reply he submits will be stricken without further notice and will
12 not be considered.

13 Furthermore, under Local Rule 270(b), because the undersigned is not the trial judge, the
14 undersigned may conduct the settlement conference, "except that, at the time the settlement
15 conference is scheduled or as otherwise ordered by the Court, any party may request that the
16 conference not be conducted by the assigned Magistrate Judge." The parties will therefore be
17 given an opportunity to request that another magistrate judge conduct any settlement conference
18 that may be scheduled.

19 Accordingly, **IT IS HEREBY ORDERED** that:

20 1. The Clerk of the Court is directed to STRIKE plaintiff's duplicative motions for
21 preliminary injunction (ECF Nos. 103, 113).

22 2. Plaintiff's motions to compel (ECF Nos. 102, 109, 110) are DENIED.

23 3. Plaintiff's April 17, 2023 motion for appointment of counsel (ECF No. 108) is
24 DENIED and the Clerk of the Court is directed to STRIKE the duplicative motions for
25 appointment of counsel (ECF Nos. 114, 117) from the record.

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28 ² The deadline for filing dispositive motions was June 9, 2023. ECF No. 98.

1 4. Plaintiff's motion requesting the court compel defendants to settle the case (ECF No.
2 115) is DENIED and the Clerk of the Court is directed to STRIKE the duplicative motion (ECF
3 No. 118).

4 5. Plaintiff's motion for a settlement conference (ECF No. 116) is GRANTED to the
5 extent that defendants shall notify the court within fourteen days of the service of this order
6 whether they believe a settlement conference would be productive. The motion is otherwise
7 DENIED.

8 6. Within fourteen days of the service of this order, any party may request that a
9 settlement conference held in this case be conducted by a magistrate judge other than the
10 undersigned. If no party requests a different magistrate judge and the parties agree a settlement
11 conference would be productive, a settlement conference will be scheduled before the
12 undersigned.


13 **IT IS FURTHER RECOMMENDED** that:

14 1. Plaintiff's motion for preliminary injunction in the form of a transfer (ECF No. 99) be
15 DENIED as moot.

16 2. Plaintiff's motion for preliminary in the form of access to his legal materials (ECF No.
17 112) be DENIED.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
23 objections shall be served and filed within fourteen days after service of the objections. The
24 parties are advised that failure to file objections within the specified time may waive the right to
25 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 DATED: June 29, 2023

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE